



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/16/2008

(Per: RPN/RLR)



➡ Appendix A ... Part 01 of 16

➡ The 2007 drafting file for LRB-2341/1

has been transferred to the drafting file for

2007 LRB-0517

(AB 400 ... Wisconsin Act 200)

➡ The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as an appendix, to the new 2007 drafting file. This section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



2007 DRAFTING REQUEST

Bill

Received: **03/30/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-2680**

By/Representing: **Dick Sweet Pam Shannon**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Military Affairs - nat'l guard**

Extra Copies: **Pam Shannon**

Submit via email: **YES**

Requester's email: **Pam.Shannon@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Code of military justice

Instructions:

See Attached 07-1368

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P2	rnelson2 04/13/2007	wjackson 04/24/2007	sherritz 04/25/2007	_____	sbasford 04/25/2007		
/1	rnelson2 05/09/2007	wjackson 05/15/2007	jfrantze 05/16/2007	_____	cduerst 05/16/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST**Bill**Received: **03/30/2007**Received By: **rnelson2**Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-2680**By/Representing: **Dick Sweet Pam Shannon**This file may be shown to any legislator: **NO**Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Military Affairs - nat'l guard**Extra Copies: **Pam Shannon**Submit via email: **YES**Requester's email: **Pam.Shannon@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Code of military justice

Instructions:

See Attached 07-1368

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P2	rnelson2 04/13/2007	wjackson 04/24/2007	sherritz 04/25/2007	_____	sbasford 04/25/2007		

FE Sent For:

1 WJ 5/15
Jb
5/16
<END>
RS

2007 DRAFTING REQUEST

Bill

Received: **03/30/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-2680**

By/Representing: **Dick Sweet Pam Shannon**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Military Affairs - nat'l guard**

Extra Copies: **Pam Shannon**

Submit via email: **YES**

Requester's email: **Pam.Shannon@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Code of military justice

Instructions:

See Attached 07-1368

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2	/p2 Wj 4/23	dh 4/24	dh/jf 4/25			

FE Sent For:

<END>

Nelson, Robert P.

From: Knudson, Steve
Sent: Thursday, January 04, 2007 4:43 PM
To: Nelson, Robert P.
Subject: Drafting Instructions from Rep. Gundrum per Voice Mail Message
Attachments: Proposed WCMJ.doc

Attached. Please call with any questions.

Thanks.

Steve Knudson

Office of State Representative Mark Gundrum
Assistant Majority Leader
Room 119 West, State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 267-5158

01/05/2007

Nelson, Robert P.

From: lsss-program-committee-l-request@ncsl.org on behalf of Debbie Haskins [debbie.haskins@state.co.us]
Sent: Monday, January 08, 2007 3:47 PM
To: lsss-program-committee-l@ncsl.org
Subject: Re: topic suggestions from LRL

Sorry for my tardy responses. We've been busy here between weekly blizzards/snow storms. Now they are predicting another one. I echo the other comments about seeing that we get good CLE opportunities for our members. I think the panels on state/tribal relations and immigration look like timely issues. I agree that the statute publications class would probably have narrow appeal so I would not be in favor of that one. I think the mentoring issue would be better at a different kind of meeting. The legislative oversight of executive branch rules is an interesting topic and one that Colorado could help with as we have a long-standing rule review process that is somewhat unique to our state, but could be replicated elsewhere. We review rules after they are adopted and rules expire on an annual basis if we find an agency lacks or exceeds statutory authority or has conflicted with statute.

I'm not sure about the political bloggers as I don't think knowing about it or checking them would help me do my job. What would be the angle on this one?

The other reaction I had was that I want to be sure we are coming up with our own topics that we think are useful to us as legislative lawyers and not getting too locked in to topics, just yet. Pam, how are things going on the working group meeting with RAQQCS and the librarians? Have you found local people in your office to help you with the program? --
 Debbie Haskins

"Kae Warnock" <kae.warnock@ncsl.org>

"Kae Warnock"
 <kae.warnock@ncsl.org>

Sent by: lsss-program-
 committee-l-
 request@ncsl.org

To: lsss-program-committee-l@ncsl.org
 cc
 Subject: topic suggestions from LRL

12/13/2006 02:05 PM

Please respond to lsss-program-committee- l@ncsl.org
--

Hello Everyone,

The liaison for the librarians asked me to pass this list on to you. These are topic ideas they would like to explore this year at the joint professional development seminar in Santa Fe. Take a look at the list and reply with your comments. We can deal with any actual discussions on this after the first of the year.

LRL 2007 program thoughts

Law Library of Congress resources, Donna Scheeder, director. We'd probably have to pay her expenses

Panel on Legislative intent through statutory construction and history - Rob Mead, NM State Law Librarian suggested he could do this topic and we could get others through the other groups

Roundtable or panel on self publishing statutes: stories from the states

01/08/2007

Panel on Legislative oversight of rules - pro & con

including John Martinez, New Mexico Administrative Law Division Director, who would be a good presenter

Panel on state-tribal relations

Mentoring - start with NCSL's Brian Weberg for suggestions?

Political bloggers - who & why, effect

locals, Monahan, nonpartisan, <http://joemonahansnewmexico.blogspot.com/>

Whitney Cheshire, Republican, <http://www.wednesdaymorningqb.blogspot.com/>

Heath Hausman, reporter, <http://haussamen.blogspot.com/>

Immigration - border states' perspectives

Writing for the web

Thanks!

Kae Warnock
Policy Specialist
Legislative Management
NCSL
7700 East First Place
Denver, CO 80230-7143
Phone: (303) 364.7700
Direct - (303) 856.1553
kae.warnock@ncsl.org

Nelson, Robert P.

From: Sweet, Richard
Sent: Tuesday, January 09, 2007 9:36 AM
To: 'Terry McArdle'; Julio R Lt Col NGWI Barron; Milsap, Randi - DMA; David Dziobkowski
Cc: Rep.Schneider; Olson, Larry - DMA; Ryan, Robin; Nelson, Robert P.; Shannon, Pam
Subject: Wisconsin CMJ

Terry/Dave, et al.,

I spoke with Julio just a few minutes ago. He is going to clean up some of the provisions we discussed yesterday. For example, he is going to delete the reserved articles. As I mentioned to him, if something comes in later, we can always sandwich it in by inserting a statutory section that goes out one more digit after the decimal point. He is also going to delete "the term" in the various definitions. In addition, he is going to delete Articles 145 to 148. Finally, I mentioned that Article 1(b) is not needed; if any portion of the draft just uses "he", we could change it to "he or she" or use a noun instead of a pronoun. Julio mentioned that he could get us a revised draft by the end of January. He mentioned that this would include a description of how the proposed Code differs from the current Code.

I started looking at the Code and how it could be structured as a ch. 22. As we discussed yesterday, each of the Part titles could be Subchapter titles. The Articles could each be placed in a separate statutory section, but the Article number would be retained in the section. For example, Article 1 would be 22.001. Each of the sections would go out 3 places after the decimal point, and I would suggest starting the subchapters with the following numbers:

22.001 Article 1.
22.050 Article 7.
22.100 Article 15.
22.150 Article 16.
22.200 Article 22.
22.300 Article 30.
22.400 Article 36.
22.500 Article 55.
22.600 Article 59.
22.700 Article 77.
22.800 Article 135.

These are just my initial suggestions. The Legislative Reference Bureau is the final arbiter of format.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.wisconsin.gov

01/10/2007

Nelson, Robert P.

From: Terry McArdle [terrymcardle@merr.com]
Sent: Tuesday, January 09, 2007 9:56 AM
To: Sweet, Richard; Julio R Lt Col NGWI Barron; Milsap, Randi - DMA; David Dziobkowski
Cc: Rep.Schneider; Olson, Larry - DMA; Ryan, Robin; Nelson, Robert P.; Shannon, Pam
Subject: Wisconsin CMJ drafting process

Dick and Julio,

I fully concur. Julio and I discussed it earlier this morning and I think we are all tracking on how to get this accomplished with the least consternation. Thank you all for your help on this .
Out for now, Terry McArdle

-----Original Message-----

From: Sweet, Richard [mailto:Richard.Sweet@legis.wisconsin.gov]
Sent: Tuesday, January 09, 2007 9:36 AM
To: Terry McArdle; Julio R Lt Col NGWI Barron; Milsap, Randi - DMA; David Dziobkowski
Cc: Rep.Schneider; Olson, Larry - DMA; Ryan, Robin; Nelson, Robert P.; Shannon, Pam
Subject: Wisconsin CMJ

Terry/Dave, et al.,

I spoke with Julio just a few minutes ago. He is going to clean up some of the provisions we discussed yesterday. For example, he is going to delete the reserved articles. As I mentioned to him, if something comes in later, we can always sandwich it in by inserting a statutory section that goes out one more digit after the decimal point. He is also going to delete "the term" in the various definitions. In addition, he is going to delete Articles 145 to 148. Finally, I mentioned that Article 1(b) is not needed; if any portion of the draft just uses "he", we could change it to "he or she" or use a noun instead of a pronoun. Julio mentioned that he could get us a revised draft by the end of January. He mentioned that this would include a description of how the proposed Code differs from the current Code.

I started looking at the Code and how it could be structured as a ch. 22. As we discussed yesterday, each of the Part titles could be Subchapter titles. The Articles could each be placed in a separate statutory section, but the Article number would be retained in the section. For example, Article 1 would be 22.001. Each of the sections would go out 3 places after the decimal point, and I would suggest starting the subchapters with the following numbers:

22.001 Article 1.
22.050 Article 7.
22.100 Article 15.
22.150 Article 16.
22.200 Article 22.
22.300 Article 30.
22.400 Article 36.
22.500 Article 55.
22.600 Article 59.
22.700 Article 77.
22.800 Article 135.

These are just my initial suggestions. The Legislative Reference Bureau is the final arbiter of format.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.wisconsin.gov

From: Terry McArdle [mailto:terrymcardle@merr.com]

Sent: Monday, January 08, 2007 6:01 PM

To: Sweet, Richard; Julio R Lt Col NGWI Barron; Milsap, Randi - DMA; David Dziobkowski

Cc: Rep.Schneider; Olson, Larry - DMA; Ryan, Robin; Nelson, Robert P.; Shannon, Pam

Subject: RE: highlighting of "active"

Dick,

Thanks for the document. We'll make use of it on Friday morning, and get you the language Friday afternoon for the definitions.

I'd also like to note that I've emailed Lt Col Julio Barron with the concerns you, Pam and Bob have about the WCMJ. He and I also discussed this on the phone. He'll be bringing in at least one of the weekend JAG Officer's to assist with the changes that need to be made. I suggested he contact you ASAP to find out the specific rules and drafting conventions that need to be followed.

out for now,

Terry

Nelson, Robert P.

From: Barron, Julio R Lt Col NGWI [julio.barron2@us.army.mil]
Sent: Tuesday, January 09, 2007 5:07 PM
To: Terry McArdle; Sweet, Richard; Milsap, Randi - DMA; Dziobkowski, David M Maj NGWI; Ryan, Robin; Nelson, Robert P.; Shannon, Pam; Rep.Schneider; Olson, Larry L. Mr NGWI
Subject: RE: Wisconsin CMJ drafting process
Attachments: Proposed WCMJ.doc

Ladies and Gentlemen -

Based on my discussions with Dick Sweet, Terry McArdle, and Randi Milsap, I have revised the proposed Wisconsin Code of Military Justice to conform accordingly.

Please note, I have also deleted the Sodomy offense, Punitive Article 125 per discussions with Rep. Mark Gundrum.

The attachment is the revised product.

Should any additional revisions become necessary, please do not hesitate to contact me.

An analysis which compares the current WCMJ with the proposed WCMJ should be finalized by the end of this month ; I will forward that work product when completed.

I extend my appreciation to each of you for your assistance in the development of this legislation.

Thank you.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

-----Original Message-----

From: Sweet, Richard [mailto:Richard.Sweet@legis.wisconsin.gov]
Sent: Tuesday, January 09, 2007 9:36 AM
To: Terry McArdle; Julio R Lt Col NGWI Barron; Milsap, Randi - DMA; David Dziobkowski
Cc: Rep.Schneider; Olson, Larry - DMA; Ryan, Robin; Nelson, Robert P.; Shannon, Pam
Subject: Wisconsin CMJ

Terry/Dave, et al.,

I spoke with Julio just a few minutes ago. He is going to clean up some of the provisions we discussed yesterday. For example, he is going to delete the reserved articles. As I mentioned to him, if something comes in later, we can always sandwich it in by inserting a statutory section that goes out one more digit after the decimal point. He is also going to delete "the term" in the various definitions. In addition, he is going to delete Articles 145 to 148. Finally, I mentioned that Article 1(b) is not needed; if any portion of the draft just uses "he", we could

01/10/2007

change it to "he or she" or use a noun instead of a pronoun. Julio mentioned that he could get us a revised draft by the end of January. He mentioned that this would include a description of how the proposed Code differs from the current Code.

I started looking at the Code and how it could be structured as a ch. 22. As we discussed yesterday, each of the Part titles could be Subchapter titles. The Articles could each be placed in a separate statutory section, but the Article number would be retained in the section. For example, Article 1 would be 22.001. Each of the sections would go out 3 places after the decimal point, and I would suggest starting the subchapters with the following numbers:

22.001 Article 1.
22.050 Article 7.
22.100 Article 15.
22.150 Article 16.
22.200 Article 22.
22.300 Article 30.
22.400 Article 36.
22.500 Article 55.
22.600 Article 59.
22.700 Article 77.
22.800 Article 135.

These are just my initial suggestions. The Legislative Reference Bureau is the final arbiter of format.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.wisconsin.gov

WISCONSIN CODE OF MILITARY JUSTICE

Wis. Chapter 322

DRAFT CURRENT AS OF: 4 March 2007

TABLE OF CONTENTS

SUBCHAPTER I. GENERAL PROVISIONS

- **Article 1.** Definitions; gender neutrality
- **Article 2.** Persons subject to this code; jurisdiction
- **Article 3.** Jurisdiction to try certain personnel
- **Article 5.** Territorial applicability of the code
- **Article 6.** Judge Advocates

SUBCHAPTER II. APPREHENSION AND RESTRAINT

- **Article 7.** Apprehension
- **Article 9.** Imposition of restraint
- **Article 10.** Restraint of persons charged with offenses
- **Article 11.** Place of Confinement; Reports and receiving of prisoners
- **Article 12.** Confinement with enemy prisoners prohibited
- **Article 13.** Punishment prohibited before trial
- **Article 14.** Delivery of offenders to civil authorities

SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

- **Article 15.** Commanding Officer's non-judicial punishment

SUBCHAPTER IV. COURT-MARTIAL JURISDICTION

- **Article 16.** Courts-martial classified
- **Article 17.** Jurisdiction of courts-martial in general
- **Article 18.** Jurisdiction of general courts-martial
- **Article 19.** Jurisdiction of special courts-martial
- **Article 20.** Jurisdiction of summary courts-martial

SUBCHAPTER V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

- **Article 22.** Who may convene general courts-martial
- **Article 23.** Who may convene special courts-martial
- **Article 24.** Who may convene summary courts-martial

- **Article 25.** Who may serve on courts-martial
- **Article 26.** Military judge of a general or special court-martial
- **Article 27.** Detail of trial counsel and defense counsel
- **Article 28.** Detail or employment of reporters and interpreters
- **Article 29.** Absent and additional members

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

- **Article 30.** Charges and specifications
- **Article 31.** Compulsory self-incrimination prohibited
- **Article 32.** Investigation
- **Article 33.** Forwarding of charges
- **Article 34.** Advice of judge advocate and reference for trial
- **Article 35.** Service of charges

SUBCHAPTER VII. TRIAL PROCEDURE

- **Article 36.** Governor or The Adjutant General may prescribe rules
- **Article 37.** Unlawfully influencing action of court
- **Article 38.** Duties of trial counsel and defense counsel
- **Article 39.** Sessions
- **Article 40.** Continuances
- **Article 41.** Challenges
- **Article 42.** Oaths
- **Article 43.** Statute of limitations
- **Article 44.** Former jeopardy
- **Article 45.** Pleas of the accused
- **Article 46.** Opportunity to obtain witnesses and other evidence
- **Article 47.** Refusal to appear or testify
- **Article 48.** Contempt
- **Article 49.** Depositions
- **Article 50.** Admissibility of records of courts of inquiry
- **Article 50a.** Defense of lack of mental responsibility
- **Article 51.** Voting and rulings
- **Article 52.** Number of votes required
- **Article 53.** Court to announce action
- **Article 54.** Record of trial

SUBCHAPTER VIII. SENTENCES

- **Article 55.** Cruel and unusual punishments prohibited
- **Article 56.** Maximum limits
- **Article 57.** Effective date of sentences
- **Article 57a.** Deferment of sentences
- **Article 58.** Execution of confinement
- **Article 58a.** Sentences: reduction in enlisted grade upon approval
- **Article 58b.** Sentences: forfeiture of pay and allowances during confinement

SUBCHAPTER IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

- **Article 59.** Error of law; lesser included offense
- **Article 60.** Action by the convening authority
- **Article 61.** Withdrawal of appeal
- **Article 62.** Appeal by the State
- **Article 63.** Rehearings
- **Article 64.** Review by the State Judge Advocate
- **Article 65.** Disposition of records after review by the convening authority
- **Article 67a.** Review by State Appellate Authority
- **Article 70.** Appellate counsel
- **Article 71.** Execution of sentence; suspension of sentence
- **Article 72.** Vacation of suspension
- **Article 73.** Petition for a new trial
- **Article 74.** Remission and suspension
- **Article 75.** Restoration
- **Article 76.** Finality of proceedings, findings, and sentences
- **Article 76a.** Leave required to be taken pending review of certain court-martial convictions
- **Article 76b.** Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

SUBCHAPTER X. PUNITIVE ARTICLES

- **Article 77.** Principals
- **Article 78.** Accessory after the fact
- **Article 79.** Conviction of lesser included offense

- **Article 80.** Attempts
- **Article 81.** Conspiracy
- **Article 82.** Solicitation
- **Article 83.** Fraudulent enlistment, appointment, or separation
- **Article 84.** Unlawful enlistment, appointment, or separation
- **Article 85.** Desertion
- **Article 86.** Absence without leave
- **Article 87.** Missing movement
- **Article 88.** Contempt toward officials
- **Article 89.** Disrespect toward superior commissioned officer
- **Article 90.** Assaulting or willfully disobeying superior commissioned officer
- **Article 91.** Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer
- **Article 92.** Failure to obey order or regulation
- **Article 93.** Cruelty and maltreatment
- **Article 94.** Mutiny or sedition
- **Article 95.** Resistance, flight, breach of arrest, and escape
- **Article 96.** Releasing prisoner without proper authority
- **Article 97.** Unlawful detention
- **Article 98.** Noncompliance with procedural rules
- **Article 99.** Misbehavior before the enemy
- **Article 100.** Subordinate compelling surrender
- **Article 101.** Improper use of countersign
- **Article 102.** Forcing a safeguard
- **Article 103.** Captured or abandoned property
- **Article 104.** Aiding the enemy
- **Article 105.** Misconduct as prisoner
- **Article 107.** False official statements
- **Article 108.** Military property — Loss, damage, destruction, or wrongful disposition
- **Article 109.** Property other than military property — Waste, spoilage, or destruction
- **Article 110.** Improper hazarding of vessel
- **Article 111.** Drunken or reckless operation of a vehicle, aircraft, or vessel
- **Article 112.** Drunk on duty
- **Article 112a.** Wrongful use, possession, etc., of controlled substances
- **Article 113.** Misbehavior of sentinel

- **Article 114.** Dueling
- **Article 115.** Malingering
- **Article 116.** Riot or breach of peace
- **Article 117.** Provoking speeches or gestures
- **Article 120.** Rape and carnal knowledge
- **Article 121.** Larceny and wrongful appropriation
- **Article 122.** Robbery
- **Article 123.** Forgery
- **Article 123a.** Making, drawing, or uttering check, draft, or order without sufficient funds.
- **Article 124.** Maiming
- **Article 126.** Arson
- **Article 127.** Extortion
- **Article 128.** Assault
- **Article 129.** Burglary
- **Article 130.** Housebreaking
- **Article 131.** Perjury
- **Article 132.** Frauds against the government
- **Article 133.** Conduct unbecoming an officer and a gentleman
- **Article 134.** General article

SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

- **Article 135.** Courts of inquiry
- **Article 136.** Authority to administer oaths and to act as notary
- **Article 137.** Articles to be available
- **Article 138.** Complaints of wrongs
- **Article 139.** Redress of injuries to property
- **Article 140.** Delegation by the Governor
- **Article 141.** Payment of fees, costs, and expenses
- **Article 142.** Payment of fines and disposition
- **Article 143.** Uniformity of interpretation
- **Article 144.** Immunity for action of military courts

Julio

Article 76b Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

(1) Persons incompetent to stand trial.

(a) If a person subject to a general court-martial is found to lack substantial mental capacity to understand the proceedings or assist in his or own defense and the military judge determined that the person is likely to become competent within the period specified under s. 971.14(5) (a), the court-martial convening authority for the person shall commit the person to the custody of the department of health and family services under s. 971.14(5). If the military judge determines that the defendant is not likely to become competent in the time period specified under s. 971.14(5), the military judge shall suspend the general court-martial.

(b) The department of health and family services shall submit all reports that are required under s. 971.14(5)(b) and that pertain to a person subject to a commitment order under par. (a) to the convening authority/court-martial/military judge.

(c) Upon receiving a report under s. 971.17(5)(b), the convening authority/court-martial/military judge shall make a determination as to whether the person has become competent. If the convening authority/court-martial/military judge determines that the defendant has become competent, the convening authority/court-martial/military judge shall terminate the commitment to the department of health and family services and resume the general court-martial. If the convening authority/court-martial/military judge determines that the person is making sufficient progress toward becoming competent, the commitment shall continue. If the convening authority/court-martial/military judge determines that the person is not likely to become competent to proceed in the time period specified under s. 971.14(5)(a), the convening authority/court-martial/military judge shall terminate the commitment order under this subsection.

(d) If a person who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under s. 971.14(5)(a) shall be as provided under s. 971.14(5)(d).

(e) If the court-martial determines under par. (a) or (d) that the person is not likely to become competent to proceed, the convening authority/court-martial/military judge may order that the person be delivered to a facility under s. 51.15(2), an approved public treatment facility under s. 51.45(2), or an appropriate medical or protective placement facility.

(f) If the person is discharged from the military forces while subject to a commitment order under par. (a), the convening authority/court-martial/military judge shall terminate the commitment order and may order that the person be delivered to a facility under s. 51.15(2), an approved public treatment facility under s. 51.45(2), or an appropriate medical or protective placement facility.

(2) Persons found not guilty by reason of lack of mental responsibility.

(a) If a court-martial finds a person not guilty by reason of mental disease or defect, the court-martial shall commit the person to the custody of the department of health and family services for a period not to exceed that described under s. 971.17(1).

(b) Using the standard under s. 971.17(3)(a), the court-martial shall determine whether the commitment order under par. (a) shall specify institutional care or conditional release.

(c) The court-martial has the same authority as a circuit court has under s. 971.17(2) to order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a mental examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the court-martial in determining whether to place the person in institutional care or to conditionally release the person.

(d) If the court-martial specifies institutional care, the department of health and family services shall place the person in an institution as provided under s. 971.17(3)(c). If the court-martial specifies conditional release, the department of health in family services, in conjunction with the person's county of residence, shall develop a plan for conditional release as provided under s. 971.17(3)(d).

(e) After the court-martial enters an order under this subsection and transfers custody of a person to the department of health and family services, the person shall be subject to s. 971.17 and the circuit court for the country in which the person is institutionalized or where the person is placed on conditional release shall have jurisdiction in proceedings under s. 971.17.

Julio

Article 50a. Defense of lack of mental responsibility

(a) The accused has an affirmative defense of lack of mental responsibility in a trial by court-martial if, at the time of the commission of the acts constituting the offense, the accused, as a result of a mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility to a reasonable certainty by the greater weight of the credible evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the military court as to the defense of lack of mental responsibility under this article and charge them to find the accused any one of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of mental disease or defect.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused of any of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of responsibility mental disease or defect.

(e) Notwithstanding the provisions of article 52, the accused shall be found not guilty by reason of mental disease or defect if any of the following apply:

(1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

(2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

(1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

(2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

Changes are to conform Article 50a to s. 971.15.

Article 76b

(1) Persons incompetent to stand trial.

(a) If a person subject to a general court-martial is found to lack substantial mental capacity to understand the proceedings or assist in his or own defense and the military judge determined that the person is likely to become competent within the period specified under s. 971.14 (5) (a), the court-martial convening authority for the person shall commit the person to the custody of the department of health and family services under s. 971.14 (5). If the military judge determines that the defendant is not likely to become competent in the time period specified under s. 971.14 (5), the military judge shall suspend the general court-martial.

Article 76b in the UCMJ, and hence this redraft, does not address how the issue of competency is raised, the competency examination, or the determination of competency. It only addresses what happens after the judge determines that the person is not competent to proceed. Is this ok?

Procedure and rules for determining competency are set forth in MCM, specifically RCM 706, 906(b)(14), 909, and 916(k)

Yes. Defense counsel will make a motion to determine competency. The court will order evaluation and a determination made by a Dr. The military judge will rule accordingly.

Is it correct that the person who convened the court-martial rather than the judge commit a person to DHFS? Who makes decisions under this subsection – the convening authority, court-martial, or military judge?

Military judge makes a finding of fact and conclusion of law. Procedure is addressed by RCM 909. It is the convening authority who orders the commitment.

Under 971.14, a court may “suspend” the criminal proceeding upon determining that the defendant is not competent and is not likely to become competent? Does it make sense to suspend a court-martial?

Once the criminal proceedings are suspended, so to is the court martial.

Should the court-martial be involved in determining whether a person is competent to refuse medication or treatment under s. 971.14 (5) (am). Should DHFS go to a circuit court to get an order for involuntary medication? Do you want the draft to remain silent on this issue?

The military judge should become involved in involuntary medication only to the extent this state impacts the court martial proceedings. Otherwise, DHFS should have the action.

(b) The department of health and family services shall submit all reports that are required under s. 971.14 (5) (b) and that pertain to a person subject to a commitment order under par. (a) to the convening authority/court-martial/military judge.

(c) Upon receiving a report under s. 971.17 (5) (b), the convening authority/court-martial/military judge shall make a determination as to whether the person has become competent. If the convening authority/court-martial/military judge determines that the defendant has become competent, the convening authority/court-martial/military judge shall terminate the commitment to the department of health and family services and resume the general court-martial. If the convening authority/court-martial/military judge determines that the person is making sufficient progress toward becoming competent, the commitment shall continue. If the convening authority/court-martial/military judge determines that the person is not likely to become competent to proceed in the time period specified under s. 971.14 (5) (a), the convening authority/court-martial/military judge shall terminate the commitment order under this subsection.

(d) If a person who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under s. 971.14 (5) (a) shall be as provided under s. 971.14 (5) (d).

(e) If the convening authority/court-martial/military judge determines under par. (a) or (d) that the person is not likely to become competent to proceed, the convening authority/court-martial/military judge may order that the person be delivered to a facility under s. 51.15 (2), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

(f) If the person is discharged from the military forces while subject to a commitment order under par. (a), the convening authority/court-martial/military judge shall terminate the commitment order and may order that the person be delivered to a facility under s. 51.15 (2), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

By delivering a person to a facility for potential commitment under 51 or 55, the military forces may become involved in initiating or providing information for the civil commitment proceedings. Is this ok?

Yes. The findings of fact which formed the basis of the military judge's conclusions of law regarding a finding of lack of mental disease or defect is appropriate information to provide for civil commitment purposes.

Article 76b (a) (3) seems to contemplate that if the military brings charges, but suspends proceedings because the defendant is not competent and not likely to become competent, and subsequently, after the defendant is no longer subject to the UCMJ, the defendant becomes competent, a civilian code may continue the prosecution. Do you want to include something to this effect? How would the court martial transfer jurisdiction to a circuit court?

Under Solorio v. United States, 483 U.S. 435 (1987) the military MAY maintain jurisdiction. If not, notice by DHFS to the District Attorney in the affected jurisdiction will occur and the DA may bring an action.

(2) Persons found not guilty by reason of lack of mental responsibility.

(a) If a court-martial finds a person not guilty by reason of mental disease or defect, the court-martial shall commit the person to the custody of the department of health and family services for a period not to exceed that described under s. 971.17 (1).

(b) Using the standard under s. 971.17 (3) (a), the court-martial shall determine whether the commitment order under par. (a) shall specify institutional care or conditional release.

(c) The court-martial has the same authority as a circuit court has under s. 971.17 (2) to order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a mental examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the court-martial in determining whether to place the person in institutional care or to conditionally release the person.

(d) If the court-martial specifies institutional care, the department of health and family services shall place the person in an institution as provided under s. 971.17 (3) (c). If the court-martial specifies conditional release, the department of health in family services, in conjunction with the person's county of residence, shall develop a plan for conditional release as provided under s. 971.17 (3) (d).

(e) After the court-martial enters an order under this subsection and transfers custody of a person to the department of health and family services, the person shall be subject to s. 971.17 and the circuit court for the country in which the person is institutionalized or where the person is placed on conditional release shall have jurisdiction in proceedings under s. 971.17.

Should (2) (a) provide that court-martial "may" rather than "shall" commit person to DHFS?

The court martial must refer the accused for commitment to DHFA if mental disease or defect found. The term "shall" is appropriate.

Who is acting under this subsection – the military judge, the court-martial, or the convening authority?

Both MJ and CA have roles under this section.

Section 322.005

(1) Chapters 939, 967 to 973, and 975 to 979 do not apply to proceedings under this chapter.

code
(2) A crime under this chapter is a crime under s. 939.12; a felony under this chapter is a felony under s. 939.22 (12); and a misdemeanor under this chapter is a misdemeanor under s. 939.22 (20).

Do you need any of the provisions from chapter 939 to apply, for example defenses and provisions on state of mind?

Defenses are not addressed in the UCMJ/WCMJ. Specific affirmative defenses including mode of proof are set forth in the MCM in RCM 916. The intent is for the government to adopt MCM by EO as authorized by WCMJ.

Article 50a. Defense of lack of mental responsibility

(a) The accused has an affirmative defense of lack of mental responsibility in a trial by court-martial if, at the time of the commission of the acts constituting the offense, the accused, as a result of a mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility to a reasonable certainty by the greater weight of the credible evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the military court as to the defense of lack of mental responsibility under this article and charge them to find the accused any one of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of mental disease or defect.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused of any of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of responsibility mental disease or defect.

(e) Notwithstanding the provisions of article 52, the accused shall be found not guilty by reason of mental disease or defect if any of the following apply:

Hi Robin. Article 112a.(b) was the provision we wanted synchronized with WI Chapter 961. I propose the revision listed below. Note, (a) does not change and (b) simply incorporate the definition of Schedule I - V as well as the controlled substance analog. Your thoughts please.

Article 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States, the State, or of any other state, state military forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are listed in Wis. Stat. ss 961.14, 961.16, 961.18, 961.20, 961.22, and 961.25.

Article 50a. Defense of lack of mental responsibility

(a) The accused has an affirmative defense of lack of mental responsibility in a trial by court-martial if, at the time of the commission of the acts constituting the offense, the accused, as a result of a mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility to a reasonable certainty by the greater weight of the credible evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the military court as to the defense of lack of mental responsibility under this article and charge them to find the accused any one of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of mental disease or defect.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused of any of the following:

- (1) Guilty.
- (2) Not guilty.
- (3) Not guilty by reason of responsibility mental disease or defect.

(e) Notwithstanding the provisions of article 52, the accused shall be found not guilty by reason of mental disease or defect if any of the following apply:

(1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

(2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

Article 76b Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

(1) Persons incompetent to stand trial.

(a) If a person subject to a general court-martial is found to lack substantial mental capacity to understand the proceedings or assist in his or own defense and the military judge determined that the person is likely to become competent within the period specified under s. 971.14(5) (a), the court-martial convening authority for the person shall commit the person to the custody of the department of health and family services under s. 971.14(5). If the military judge determines that the defendant is not likely to become competent in the time period specified under s. 971.14(5), the military judge shall suspend the general court-martial.

(b) The department of health and family services shall submit all reports that are required under s. 971.14(5)(b) and that pertain to a person subject to a commitment order under par. (a) to the convening authority/court-martial/military judge.

(c) Upon receiving a report under s. 971.17(5)(b), the convening authority/court-martial/military judge shall make a determination as to whether the person has become competent. If the convening authority/court-martial/military judge determines that the defendant has become competent, the convening authority/court-martial/military judge shall terminate the commitment to the department of health and family services and resume the general court-martial. If the convening authority/court-martial/military judge determines that the person is making sufficient progress toward becoming competent, the commitment shall continue. If the convening authority/court-martial/military judge determines that the person is not likely to become competent to proceed in the time period specified under s. 971.14(5)(a), the convening authority/court-martial/military judge shall terminate the commitment order under this subsection.

(d) If a person who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under s. 971.14(5)(a) shall be as provided under s. 971.14(5)(d).

(e) If the court-martial determines under par. (a) or (d) that the person is not likely to become competent to proceed, the convening authority/court-martial/military judge may order that the person be delivered to a facility under s. 51.15(2), an approved public treatment facility under s. 51.45(2), or an appropriate medical or protective placement facility.

(f) If the person is discharged from the military forces while subject to a commitment order under par. (a), the convening authority/court-martial/military judge shall terminate the commitment order and may order that the person be delivered to a facility under s. 51.15(2), an approved public treatment facility under s. 51.45(2), or an appropriate medical or protective placement facility.

(2) Persons found not guilty by reason of lack of mental responsibility.

(a) If a court-martial finds a person not guilty by reason of mental disease or defect, the court-martial shall commit the person to the custody of the department of health and family services for a period not to exceed that described under s. 971.17(1).

(b) Using the standard under s. 971.17(3)(a), the court-martial shall determine whether the commitment order under par. (a) shall specify institutional care or conditional release.

(c) The court-martial has the same authority as a circuit court has under s. 971.17(2) to order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a mental examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the court-martial in determining whether to place the person in institutional care or to conditionally release the person.

(d) If the court-martial specifies institutional care, the department of health and family services shall place the person in an institution as provided under s. 971.17(3)(c). If the court-martial specifies conditional release, the department of health in family services, in conjunction with the person's county of residence, shall develop a plan for conditional release as provided under s. 971.17(3)(d).

(e) After the court-martial enters an order under this subsection and transfers custody of a person to the department of health and family services, the person shall be subject to s. 971.17 and the circuit court for the country in which the person is institutionalized or where the person is placed on conditional release shall have jurisdiction in proceedings under s. 971.17.

Nelson, Robert P.

From: Barron, Julio R Lt Col NGWI [julio.barron2@us.army.mil]
Sent: Thursday, March 22, 2007 10:35 AM
To: Nelson, Robert P.
Subject: RE: WI Code of Military Justice

Bob - Will do.

Robin's revisions are limited to the following 3 articles:

Articles 50a

Article 76b

Article 112a(b)

After I receive Robin's input, I will staff the revisions with the Army and Air Judge Advocates and e-mail you just those sections which have been revisited and approved. I will use the WCMJ draft which I sent out on March 22 as the base line document.

Thank you for your assistance.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin Air National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

-----Original Message-----

From: Nelson, Robert P. [mailto:Robert.Nelson@legis.wisconsin.gov]
Sent: Thursday, March 22, 2007 10:20 AM
To: Barron, Julio R Lt Col NGWI
Subject: RE: WI Code of Military Justice

Julio,

Our typing staff had already converted the earlier draft to the proper format, so, after you receive and incorporate Robin's changes, could you identify all of the sections of text that have been changed between the earlier draft and the final draft of this version. I can have those sections of text replaced with the new text, rather than converting all of this final draft.

Thanks,

Bob N

From: Barron, Julio R Lt Col NGWI [mailto:julio.barron2@us.army.mil]
Sent: Monday, March 19, 2007 1:46 PM
To: Milsap, Randi - DMA; Uselman, Tracey; Dziobkowski, David M Maj NGWI; Olson, Larry L. Mr NGWI; Rep.Schneider; Shannon, Pam; Sweet, Richard; Terry McArdle; Nelson, Robert P.; Ryan, Robin
Subject: RE: WI Code of Military Justice

Ladies and Gentlemen -

03/26/2007

The Army and Air Judge Advocate Corps have adopted Randi Milsap and Bob Nelson's proposed changes. I have attached a clean version of the proposed WCMJ.

Robin - I request that you input your changes, recommendations with comments, if any, using this attachment.

Thank you.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin Air National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

-----Original Message-----

From: Milsap, Randi - DMA [mailto:randi.milsap@dma.state.wi.us]

Sent: Friday, March 16, 2007 2:17 PM

To: Barron, Julio R Lt Col NGWI; Uselman, Tracey - LEGIS; Dziobkowski, David M Maj NGWI; Olson, Larry L. Mr NGWI; Rep.Schneider; Shannon, Pam - LEGIS; Sweet, Richard - LEGIS; Terry McArdle; Nelson, Robert P. - LEGIS; Ryan, Robin - LEGIS

Subject: RE: WI Code of Military Justice

All:

Attached please find my revisions and comments using the reviewing tool.

Randi Wind Milsap

Legal Counsel
WI Dept. of Military Affairs
2400 Wright Street
Madison, WI 53708
Phone: (608) 242-3072; DSN 724-3072
Secure Fax: (608) 242-3082; DSN 724-3082
E-mail: randi.milsap@dma.state.wi.us

-----Original Message-----

From: Barron, Julio R Lt Col NGWI [mailto:julio.barron2@us.army.mil]

Sent: Friday, March 16, 2007 8:21 AM

To: Uselman, Tracey - LEGIS; Dziobkowski, David; Milsap, Randi - DMA; Olson, Larry (DMA); Rep.Schneider; Shannon, Pam - LEGIS; Sweet, Richard - LEGIS; Terry McArdle; Nelson, Robert P. - LEGIS; Ryan, Robin - LEGIS

Subject: WI Code of Military Justice

Ladies and Gentlemen -

Attached is the WI Code of Military Justice which has been revised based on our 15 March 07 meeting.

Please note, the following 4 articles remaining pending revisions/input and review:

1. Article 50a remains pending with Robin Ryan's input.
2. Article 76b remains pending with Robin Ryan's input.
3. Article 111 remains pending Randi Milsap's input. Bob Nelson's recommendations are reflected in the attached document.
4. Article 112a(b) remains pending Robin Ryan's input.

Robin and Randi - I respectfully request that you track your input/changes on the attached draft document so that I may staff your revisions with the Army and Air Judge Advocates prior to finalizing the document.

Thank you all for your efforts.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin Air National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

Nelson, Robert P.

From: Barron, Julio R Lt Col NGWI [julio.barron2@us.army.mil]
Sent: Monday, March 26, 2007 12:46 PM
To: Nelson, Robert P.
Subject: RE: WI Code of Military Justice
Attachments: Articles 50a & 76b.doc

Bob -

As requested, please see the attachment which only includes the revised articles 50a & 76b.

Please note, article 112a remains pending.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin Air National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

-----Original Message-----

From: Barron, Julio R Lt Col NGWI
Sent: Thursday, March 22, 2007 10:35 AM
To: 'Nelson, Robert P.'
Subject: RE: WI Code of Military Justice

Bob - Will do.

Robin's revisions are limited to the following 3 articles:

Articles 50a
Article 76b
Article 112a(b)

After I receive Robin's input, I will staff the revisions with the Army and Air Judge Advocates and e-mail you just those sections which have been revisited and approved. I will use the WCMJ draft which I sent out on March 22 as the base line document.

Thank you for your assistance.

v/r,

Lt Col Julio R. Barron
Staff Judge Advocate
Wisconsin Air National Guard
2400 Wright Street
Madison, Wisconsin 53708-8111
Telephone: 608-242-3077 / DSN 724-3077
Fax: 608-242-3082 / DSN 724-3082
julio.barron2@us.army.mil

03/26/2007

-----Original Message-----

From: Nelson, Robert P. [mailto:Robert.Nelson@legis.wisconsin.gov]

Sent: Thursday, March 22, 2007 10:20 AM

To: Barron, Julio R Lt Col NGWI

Subject: RE: WI Code of Military Justice

Julio,

Our typing staff had already converted the earlier draft to the proper format, so, after you receive and incorporate Robin's changes, could you identify all of the sections of text that have been changed between the earlier draft and the final draft of this version. I can have those sections of text replaced with the new text, rather than converting all of this final draft.

Thanks,

Bob N